Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

ORIGINAL

In the Matter of	)	
	)	
Establishment of a Class A Television Service	)	MM Docket No. 00-10
	)	

To: The Commission

PETITION FOR RECONSIDERATION

Tiger Eye Broadcasting Corporation ("Tiger Eye"), by counsel and pursuant to Section 1.429 of the Commission's Rules, hereby respectfully requests reconsideration of certain aspects of the Commission's Report and Order ("*R&O*") of April 4, 2000 in the above-captioned proceeding.[1] In support whereof, the following is respectfully shown:

Discussion

I. The FCC Can and Should Continue to Accept Class A Applications.

The Community Broadcasters Protection Act of 1999 (the "CBPA")[2] provides that an LPTV station may qualify for Class A status in one of two ways. First, a station may qualify if, during the 90 days preceding enactment of the statute (i.e. August 31, 1999 through November 28, 1999): (a) the station broadcast a minimum of 18 hours per day; (b) the station broadcast an average of three hours per week of programming produced within the station's market area (or the market area served by a group of commonly owned stations), and (c) the station was in compliance with the

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[1] Report and Order MM Docket No. 00-10 (In the Matter of Establishment of a Class A Television Service), FCC 00-115 (released April 4, 2000).

[2] Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-549 - 1501A-598 (1999), codified at 47 U.S.C. §336(f) (the "CBPA").

Commission's requirements for LPTV stations.[3] Second, a station may qualify for Class A status if the Commission determines that the public interest, convenience and necessity would be served by treating the station as a qualifying low-power television for purposes of the statute, or for other reasons determined by the FCC.[4] In other words, even an LPTV licensee that did not meet the three-pronged statutory test, or could not meet the test within the three month time period specified in the statute, could be deemed a "qualified" licensee entitled to Class A status if for any reason the FCC determined that this would serve the public interest, convenience and necessity

In the *R&O,* the FCC simply ignores the discretion expressly granted it by Congress, concluding that the basic purpose of the CBPA was to permit a one-time conversion of a single pool of existing LPTV licensees that met specific criteria before the statute was enacted.[5] With this interpretation, the FCC basically closes the door on any future Class A applications, thereby forever denying the majority of LPTV licensees the benefits of Class A status.

In effect, the FCC read into the statute restrictive language that simply does not exist, and that is directly contradicted by Congress' express grant to the FCC of broad authority to fashion alternative qualifications tests for licensees seeking Class A status. This contradicts the most basic tenets of statutory interpretation,[6] as well as common sense.

In an attempt to bolster its position, the FCC makes reference to language in the statute recognizing that since the inception of low power television, a "small number of licensees have

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[3] 47 U.S.C. § 336(f).

[4] *I.d.*

[5] *R&O* at ¶'s 11-12.

[6] *See Chevron U.S.A., Inc. v. Natural Resources Defense Counsel*, 467 U.S. 837 (1984).

operated their stations in a manner beneficial to the public good providing broadcasting to their communities that would not otherwise be available."[7] This is little more than a recognition by Congress of marketplace realities. If Congress had intended that only this select group of LPTV licensees should be entitled to seek Class A status, it would have indicated such, and not given the FCC discretion to fashion broader qualifications standards.

Both Congress and the FCC have recognized that LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide valuable local and/or niche programming to residents of specific ethnic, racial and other special interest communities, and to residents of such discrete communities within larger markets, thereby advancing the fundamental goals of diversity and localism in television broadcasting.[8] Both Congress and the FCC also have recognized that obtaining Class A status, and the benefits associated therewith, would greatly facilitate the acquisition of capital needed by LPTV stations to continue to provide free, over-the-air programming to their communities.[9] In light of these obvious and acknowledged benefits, it is absurd to even suggest that Congress intended to limit the benefits of Class A status only to a small number of licensees that would meet certain statutory guidelines during a three month window in 1999, or that the public interest would be served thereby.[10]

The FCC has the discretion under the CBPA, and should use that discretion, to allow LPTV

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[7] *R&O* at ¶ 12; CBPA § (b)(1).

[8] *R&O* at ¶'s 1-2.

[9] *I.d.*

[10] *Bechtel Constr. v. United Bhd. of Carpenters*, 812 F. 2d 1220, 1225 (9th Cir. 1987) ("Legislative enactments should never be construed as establishing statutory schemes that are illogical, unjust or capricious").

licensees to seek Class A status pursuant to the three-pronged statutory test on a going forward basis. At a minimum, this will provide incentive to all LPTV licensees to make maximum use of their facilities, and thereby promote diversity and localism on a much broader scale, which is critical given that full-power broadcasters are rapidly consolidating.

II. Class A Licensees Should Not Be Subject To FCC Staffing Policies; Or Should Be Allowed To Seek Waivers Of Such Policies.

The FCC concluded in the *R&O* that it should apply to Class A applicants and licensees all Part 73 broadcast regulations except for those that cannot apply for technical or other reasons.[11] Included in those Part 73 rules is Section 73.1125, which concerns station main studio location and, by implication, the staffing policies related thereto. With respect to the latter, the Commission requires broadcast stations to have a meaningful management and staff presence at the main studio. A "meaningful presence" has been defined as a minimum of one full-time management employee and one full-time staff employee.[12]

Tiger Eye is the licensee/permittee of forty-one LPTV stations nationwide, and manages an additional fourteen LPTV stations. Tiger Eye knows from practical experience that by employing experienced people and utilizing state-of-the-art technology, LPTV stations, including Class A stations, can be operated entirely consistent with the FCC's rules and policies with fewer than two full-time employees, using part-time and/or shared employees along with the necessary management/technical personnel. To require Tiger Eye to add a set number of full-time employees to each of its stations would add many thousands of dollars to its monthly operating expenses, with

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[11] *R&O* at ¶ 23.

[12] *See Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

little or no economic or operational benefit to the company, or service benefit to the public. For many licensees, this added expense alone could spell the difference between profit and loss, success and failure.

As the Commission is fully aware, LPTV licensees historically have been hampered by the secondary status of the service, smaller coverage areas, lack of cable carriage, etc. While attaining "primary" status should certainly help Class A licensees, it will not by itself allow them to overcome all of the disadvantages inherent in the service. LPTV licenses, including Class A licensees, need the flexibility to take full advantage of technological innovations and operational efficiencies. Rules that prevent or make it more difficult to realize such efficiencies make it unnecessarily difficult to compete, and could undermine the long term viability of many stations.

The FCC should not require Class A licensees to comply with its staffing policies for full power stations or, at the very least, it should set-out guidelines for Class A licensees to seek a waiver of these policies where it can be demonstrated that the underlying purpose of the rule would not be frustrated.[13] Such flexibility would allow licensees to meet the FCC's policy objectives, while at the same time taking into consideration marketplace realities.

Conclusion

The full benefits of Class A status will never be recognized if the pool of potential candidates is limited to those few stations that could meet the statutory test during the three month window preceding enactment of the CBPA. The FCC should exercise the discretion afforded it by Congress

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[13] Noncommerical educational broadcasters can request, and have obtained, waivers of the main studio rule and associated policies, with such waivers typically based on their limited financial resources. *See e.g. Pataphysical Broadcasting Foundation*, 13 FCC Rcd 1248 (1997). There is no reason why LPTV licensees, who often face similar obstacles and restraints, should not be afforded similar opportunity.

and accept Class A applications on a going forward basis. This is the only way to ensure that LPTV's important role in ensuring diversity and localism in television broadcasting is maximized.

Similarly, the FCC should not saddle Class A licensees with rules and policies that needlessly prevent them from taking advantage of technical and operational innovations and efficiencies. Specifically, the FCC should not require Class A licensees to meet the staffing policies established for full power stations, or at the very least it should allow waivers of such policies, so that Class A licensees can compete more effectively in the marketplace.

Respectfully submitted,

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Date: June 9, 2000

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